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notes 2 and 3) might lead one to infer. There is nothing in the opinions in *Leloup vs. Port of Mobile* and *Crutcher vs. Kentucky* to indicate that the court would have permitted the license tax on the business had those engaged therein been agents of domestic rather than of foreign corporations. And the basis of the decision in *Wiggins Ferry Company vs. East St. Louis* sustaining a state license tax on a ferry seems to be that the property employed had its situs within the state rather than that it was owned by a domestic corporation. But whatever weight may at one time have been accorded to this distinction, it is now definitely abandoned (See pages 268-270).

It seems ungracious to suggest omissions in a work so replete with information and discriminating comment, but one would welcome a fuller consideration of the application of the so-called unit rule to the valuation of interstate properties (page 150) and a discussion of the jurisdictionary questions which arise in connection with the taxation of inheritances (Chapter V). But such omissions as the reader may regret are amply atoned for by the wealth of bibliographical material appended to the discussion of all the topics covered.

Thomas Reed Powell.

PENAL PHILOSOPHY. By GABRIEL TARDE. Translated by RAPELJE HOWELL, with an editorial preface by EDWARD LINDSEY, and an introduction by ROBERT H. GAULT. (The Modern Criminal Science Series, published under the auspices of The American Institute of Criminal Law and Criminology.) Boston: LITTLE BROWN & Co. 1912. pp. xxxii, 581.

At the National Conference of Criminal Law and Criminology in 1909 the American Institute of Criminal Law and Criminology appointed a committee of five to select and procure the translation and publication of "important treatises on criminology in foreign languages", and Professor Tarde's work is the sixth in the series to be published. It would have been difficult to have made a better choice.

In the foreword the author states that the book deals with three different matters. First, the reconciling of moral responsibility with determinism; secondly, a general explanation of the criminal side of societies; and thirdly, reforms which the author believes to be necessary.

After pointing out the present crises both in morality and in criminal law, and discussing at length the various existing theories of responsibility which he finds unsatisfactory, the author develops his own theory based upon the continued mental and moral identity of the accused, and his similarity to the society in which the crime was committed. Of these two elements, however, the former, *i. e.*, the continued identity of the accused, is vastly more important.

In order then to have complete and absolute responsibility the "myself" who is tried must be the identical "myself" who committed the act and any diminution of this identity decreases the responsibility. Certainly there is neither mental nor moral identity between the "myself" who has killed a man in an epileptic fit and the "myself" existing between the recurring attacks of this malady. In social similarity the author finds the other factor necessary to complete responsibility. Obviously it would be unfair to hold a savage suddenly set down in the midst of us to the same degree of accountability as a life-long member of the community, nor would it be necessary to do so on account of the deterrent effect of punishment upon the members of the community.

Passing from the theory of responsibility to that of irresponsibility

the author discusses to what extent and for what reasons certain states such as madness, epilepsy, intoxication, old age, and hypnotism cause one to be irresponsible, and finds therein additional proofs of the soundness of his theory as to identity. He holds that infirmity and madness are always strangers to the real responsible "myself", even though chronic and incurable. Another corollary of this theory is that beneficial and non-pathological alienation of the "myself"—i. e., a real moral conversion * * * should give the same irresponsibility to the individual, nor does this interfere with the end of punishment, whether that end be considered deterrent or reformatory or both. In other words the "myself" of the really converted criminal is no more identical with his former "myself" than is the "myself" of the cured madman identical with his "myself" in his moments of insanity.

In Chapter V the author discusses the criminal, and riddles the theory of Lombroso and his school as to a criminal type possessing certain definite and well-defined characteristics. He proves that the criminal is not a madman, nor a savage, nor a degenerate, nor an epileptic, but rather a professional type. Here I cannot refrain from quoting an illuminating paragraph. P. 256. "Perhaps one is born vicious, but it is quite certain that one becomes a criminal. The psychology of the murderer is in the last analysis the psychology of everybody; and in order to go down into his heart it will be sufficient if we analyze our own. One could without any very great difficulty write a treatise upon the art of becoming an assassin. Keep bad company; allow pride, vanity, envy and hatred to grow in you out of all proportion; close your heart to tender feelings and only open it to keen sensations; suffer also,—harden yourself from childhood to blows, to intemperateness, to physical torments; grow hardened to evil and insensible, and you will not be long in becoming devoid of pity; become irascible and vengeful and you will be very lucky if you do not kill anybody during the course of your life."

Passing on to classification, Tarde holds that it should be psychological above everything else, and for this reason draws his chief distinction between rural and urban criminals, a method more applicable to Europe, on account of the greater stability of its population, than to this country.

In the succeeding chapter the value of criminal statistics, the effect of climate and the seasons and other physical and physiological influences upon crime are discussed. The author reaches the conclusion that social causes preponderate, chief among which is to be reckoned the tendency towards imitation. In developing this point he distinguishes between "imitation-fashion" and "imitation-custom", the former sometimes crystallizing into the latter. The superior in the social scale is more often imitated by his inferior than vice versa. An interesting analogy is drawn between the imitation of the nobility of former times by the plebians and the present imitation of cities by the country. The criminality of cities is next discussed, the author denying the statement of some of the Italian Positivists that there is an inverse ratio between crimes against the person and crimes against property.

The author next discusses at length the influence of teaching, of religion, of industry, and of civilization upon crime, and shows that some acts formerly licit have now become criminal and vice versa. He also gives an account of the changes in the methods of criminals, showing how they have taken advantage of the progress of civilization.

The third part of the book, which deals with changes and reforms

in criminal jurisprudence, is the most valuable. A short history of criminal procedure is given, from the days of the ordeal through the duel at law, and torture down to the present jury system. This system he attacks with bitterness and irrefutable arguments. He advocates a school for criminal judges who will thus become experts, and points out that the hearing of civil causes necessarily unfits a man for work on the criminal side.

The author ridicules the idea of making the gravity of a crime depend upon the amount of premeditation and suggests that a better criterion is to be found in the nature of the passions and tastes which have impelled the criminal to the act. He further maintains that as an abortive attempt to commit crime has shown the malefactor to be a menace to society he should receive the same punishment as if the attempt had been successful, and that coöperation in crime should be considered an aggravating circumstance. A lengthy chapter is devoted to penalties, the author favoring a period of imprisonment to be followed by release on parole. Of course he assumes that this means an intelligent supervision of the convict. It may in Europe, but it certainly does not in this country.

Perhaps the most startling chapter is the last, which is devoted to the death penalty. His argument in favor of it and of its extension is excellent, as are the reasons given for substituting some more humane form of punishment in place of hanging or decapitation.

To sum up, the work is a distinct and valuable contribution to the science of criminal law. Mr. Howell is to be praised for his painstaking and interesting translation.

J. E. Corrigan.

A TREATISE ON THE LAW OF IRRIGATION AND WATER RIGHTS AND THE ARID REGION DOCTRINE OF APPROPRIATION OF WATERS. By CLESSON S. KINNEY. Second Edition, revised and enlarged to October 1, 1912. San Francisco: BENDER MOSS COMPANY. 1912. Vol. I, pp. xxxii, 1-1097; Vol. II, pp. xxviii, 1098-2194; Vol. III, pp. xxv, 2195-3146; Vol. IV, pp. xxi, 3147-4558.

At the time of the publication of the first edition of this work in 1894, it was at once recognized as an important contribution to the literature of the subject. Since 1894 the development of the law of irrigation and water rights in the arid and semi-arid states has been so rapid and important, that, as well stated by the author in his preface, no apology is needed for a new edition, which is practically a new work. In the period mentioned, irrigation district laws have become firmly established; State control of waters has developed; the Carey Act and the National Reclamation Act have appeared; and thousands of cases have been decided by the courts settling many hitherto disputed points, and presenting many new phases of this important subject. This new work must take its deserved place as leader among text-book authorities on its subject.

In the limited space of a review, little more can be done than indicate the scope of a work of this magnitude. The four volumes are divided into twelve parts, the titles of which are as follows: Part I, Economic Questions Relating to Irrigation and Waters; Part II, Ancient and Modern Irrigation; Part III, Classification, Definition and the Nature of Waters; Part IV, Rights of the Public in Waters and Water Courses; Part V, Acquisition and Disposal of Lands and Waters by the United States; Part VI, The Common Law Governing